IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 566 OF 1995

The State of Maharashtra ...Appellant.

Versus

Pankaj Jathalal Shah,
Age 23 years, At Post Chowk,
Tq. Khalapur, Dist. Raigad ...Respondent

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Shri. A.S. Shitole, A.P.P. for appellant-State.

Shri. S.G. Surana, Adv. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 22ND NOVEMBER, 2004

ORAL JUDGMENT:-

1. The appellant i.e. the State of Maharashtra has challenged the judgment and order dated 4.7.1995 passed by the learned J.M.F.C. Khalapur, District Raigad in S.C. No. 1719 of 1989. By the said judgment and order, the learned Magistrate acquitted the respondent i.e. original accused of the offence under Section 304-A, 279, 337, 338 of I.P.C. and under Section 116 of Motor Vehicles Act.

2. It is the prosecution case that on 9.11.1989 at

about 7.15 a.m. the respondent while driving his motor cycle No.MH-06-A-242 rashly and negligently, dashed against one Sakharam Vishnu Dalvi causing his death and also caused injuries to himself. Thereafter, a complaint was lodged.

3. During the course of the trial, particulars of the offence (Exh.6) were stated to the accused. The accused pleaded not guilty and claimed to be tried. Thereafter, the prosecution examined five witnesses. The defence admitted the death certificate of Sakharam Dalvi. The respondent accused admitted the occurrence of the incident. However, it is the defence of the accused that he was not driving his motor cycle rashly and negligently at the relevant time.

4. Five witnesses came to be examined by the prosecution. The learned Magistrate after going through the evidence of these witnesses acquitted the respondent-accused. Hence, this appeal.

5. I have heard Shri. Shitole, the learned A.P.P. for the appellant-State as well as Shri. Surana, the learned advocate for the respondent-accused and perused the entire material on record. After perusing the entire material on record, I am satisfied that the view of acquittal taken by the

learned Magistrate was a reasonable and possible view.

6. At the outset, it has to be noted that accused has admitted occurrence of the incident in his statement Under Section 313 of Cr.P.C. Hence, the fact that he gave dash to Sakharam Vishnu Dalvi and said Sakharam Vishnu Dalvi died in the said incident is admitted. The only aspect which is required to be dealt with is whether accused was driving his motor cycle rashly and negligently at the relevant time.

7. In the present case five witnesses have been examined by the prosecution. As far as the evidence of P.W.1 Prakash More is concerned, his evidence in no way implicates the present respondent. The evidence of P.W.5 Head Constable Bhagat is only formal in nature and hence is of no use to the prosecution. This would leave only the evidence of P.Ws.2, 3 and 4. P.W.3 Yashwant Sakharam Dalvi admittedly is not an eye witness, hence his evidence is not of any use to the prosecution. P.W.4 Deepak Sawant is an eye witness and he is also an independent witness. Hence, his evidence assumes great importance. However, it is pertinent to note that this eye witness who is also an independent witness has not spoken even a single

word that the accused was driving his motor cycle rashly and negligently at the relevant time. This leaves only the testimony of P.W.2. P.W.2 Madhukar Dalvi has stated that the deceased Sakharam Dalvi was his grand father. While his grand father was crossing the road from Nadhal to Nadhal Katkarwadi on the day of incident, the accused came on motor cycle in high speed and dashed against the deceased. Thereafter, the accused and deceased fell down. The deceased was removed to the hospital, thereafter, the deceased expired in the hospital. From the evidence of P.W.2 Madhukar Dalvi it is seen that he is a highly interested witness. His testimony is not corroborated by any of the other witnesses including P.W.4 Deepak Sawant who is also an eye witness and moreover he is an independent witness. Looking to the fact that P.W.2 Madhukar Dalvi is a highly interested witness and there is no other independent material to corroborate his version, the learned Magistrate has found it unsafe to rely on the sole testimony of P.W.2 Madhukar Dalvi. The view taken by the learned Magistrate can be said to be a possible view.

8. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court

would have been taken a different view would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am only referring to two of them. **AIR 1971 SC 66 Khedu Mohtan Vs. State of Bihar and (2003) 1 SCC 1 in the case of C. Anthony Vs. K.G. Raghavan Nair.** The said case was also one of the appeal against acquittal and in respect of the acquittal the Supreme Court has observed that unless finding of the trial court is perverse or contrary to the material on record, the High Court in appeal cannot substitute its finding merely because another contrary opinion was possible on the basis of material on record. In my view, the view of acquittal in the present case was a possible and reasonable view.

11. In the circumstance, Criminal appeal is dismissed.